

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

INDUSTRY TECHNOLOGY AND COMMERCE LEGISLATION
AMENDMENT BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister
for Industry, Technology and Commerce,
Senator the Hon. John N Button)



INDUSTRY TECHNOLOGY AND COMMERCE LEGISLATION AMENDMENT BILL 1991

GENERAL OUTLINE

This Bill is an omnibus Bill for legislation administered within the Industry Technology and Commerce portfolio. Its purpose is to make a number of amendments to existing legislation.

2. The Bill makes the following amendments:

Industry Research and Development Act 1986

3. The amendments to this Act will:

- (a) Enable extension of the operation of two elements of the Grants for Industry Research and Development Scheme, namely Discretionary Grants and Generic Technology Grants until 30 June 1994.

Discretionary Grants are awarded to companies unable to use the 150 per cent tax incentive, such as new companies developing an innovation which is unlikely to be profitable for some years. This is the Government's main way of supporting innovation in such circumstances.

Generic Technology Grants are awarded to researchers engaged in collaborative research with a commercial partner on projects with potential for widespread use in industry. This is one of several ways in which the Government encourages the practical use of research outcomes.

The operation of both these schemes, which have been operating successfully since 1986 as essential components of the Government's package of support for industry research and development, is currently limited by the Act to 30 June 1991. The amendment will enable better planning by companies who will be more confident of support for their Research and Development;

- (b) Include the National Procurement Development Program within the Act;
- (c) Enhance appellability against certain decisions of the Industry Research and Development Board;
- (d) Clarify and simplify a number of procedural aspects of the Act.

National Measurement Act 1960

4. The amendments to this Act will close an identified loophole by providing for the prescription of all derived system international (SI) units of measurement as Australian legal units of measurement (ALU's).

5. Section 7 of the Act provides for the prescription of ALU's and that the ALU's of a physical quantity are the sole legal units of measurement of that physical quantity. The Act does not currently, however, allow for derivatives of these ALU's, for example, the litre is an ALU of volume and the minute is an ALU of time but litres per minute is not an ALU. The amendment will allow, subject to guidelines which will be disallowable, for such derivatives. The Guidelines will set out derivatives which are not permitted and provide guidance on matters related to the expression of such derivatives.

Science and Industry Research Act 1949

6. The amendment to this Act will enable the Commonwealth Science and Industry Research Organisation (CSIRO) to accept gifts of up to \$1 million without having to obtain Ministerial approval and provide for subsequent variations of this threshold figure by regulation.

Export Market Development Grants Act 1974

Industry, Technology and Commerce Legislation Amendment Act 1989

Patents Act 1990

7. The amendment of these Acts will correct a number of minor drafting errors.

FINANCIAL IMPACT STATEMENT

8. The amendments made by this Bill have no financial impact, except for the following:

Industry Research and Development Act 1986

9. Grants for the Industry Research and Development Scheme will total approximately \$32 million per annum for the next four years. The Amendments have no other financial implications.

Science and Industry Research Act 1949

10. There will be some administrative savings in not having to obtain Ministerial approval for gifts of less than \$1 million. Because of the uncertainty of the number of gifts which may be made it is not possible to quantify the administrative savings. The amendments have no other financial implications.

PART 1 - PRELIMINARY

NOTES ON INDIVIDUAL CLAUSES

Clause 1: Short Title

11. Formal.

Clause 2: Commencement

12. The amendments to the Industry Research and Development Act 1986, National Measurement Act 1960, and the Science and Industry Research Act 1949 will commence on the day on which the Act receives Royal Assent.

13. The Amendments of the Industry, Technology and Commerce Legislation Amendment Act 1989 and the Patents Act 1990, which correct minor drafting errors, will be taken to have commenced on 27 June 1989 (which is immediately after the commencement of subsection 16(2) of the Principal Act) and immediately after the commencement of the Principal Act respectively.

PART 2 AMENDMENT OF THE INDUSTRY RESEARCH
AND DEVELOPMENT ACT 1986

Clause 3: Principal Act

14. Provides that in this part, the "Principal Act" means the Industry Research and Development Act 1986.

Clause 4: Interpretation

15. Amends certain definitions in section 4 of the Principal Act and inserts certain new definitions to accommodate the National Procurement Development Program (NPDP), for example in relation to applications, agreements and payments. It also includes definitions on which the operation of NPDP relies such as "Australian government body", "Australian government contractor", "corporate researcher" and "designated activity".

Clause 5: Functions of the Board

16. Amends section 7 of the Principal Act to to include NPDP in the functions of the Industry Research and Development Board (the IR&D Board) relating to payments.

Clause 6: Guidelines

17. Simplifies the procedures for declaring guidelines for policies and practices of the IR&D Board set out in section 20 of the Principal Act by providing that the Minister does not need to consult the Board about proposed directions where the directions are to be given in accordance with a request made by the Board.

Clause 7: Agreements for discretionary grants

18. Amends section 28 of the Principal Act to extend the operation of the Discretionary Grants Scheme until 30 June 1994.

Clause 8: Agreements for generic technology grants

19. Amends section 31 of the Principal Act to extend the operation of the Generic Technology grant Scheme until 30 June 1994.

Clause 9: National Procurement Development Program Agreements

20. Inserts a new Division 3A into the Principal Act which brings the National Procurement Development Program within the purview of the Act. The IR&D Board will be empowered, subject to directions, to enter into an agreement, on behalf of the Commonwealth, with a corporate researcher and an Australian government body about a project directed towards meeting the demand or likely demand, of one or more Australian government bodies or Australian government contractors for goods or services. The project should be directed towards the development of internationally competitive goods and services and involve adequate trialling and demonstration activities.

Clause 10: Repayment of subsidies on breach of agreement

21. Amends section 38 of the Principal Act to provide that a National Procurement Development Program agreement with an Australian government body may provide for the repayment by that body to the Commonwealth of the grant or a portion of the grant in the event of a breach of the agreement by that body.

Clause 11: Registration of research agencies

22. Remedies an oversight in section 39F of the Principal Act by requiring a notice of registration of a research agency to be in writing.

Clause 12: Certificate as to research and development activities

23. Remedies an oversight in section 39L of the Principal Act by requiring written reasons to be given where the IR&D Board certifies that particular activities are not research and development activities.

Clause 13: Certificate as to core technology

24. Remedies an oversight in section 39LA of the Principal Act by requiring written reasons to be given where the Board certifies that a particular technology is not a core technology.

Clause 14: Joint registration

25. Requires the Board to give written reasons where it refuses to register companies jointly under section 39P of the Principal Act.

Clause 15: Copies of certificate to be given to persons affected

26. Remedies an oversight in section 39Q of the Principal Act by ensuring that persons are eligible to apply for a tax concession as well as companies.

Clause 16: Service of notices etc

27. Remedies an oversight in section 39R of the Principal Act by ensuring that copies of certificates are given to persons as well as companies.

Clause 17: Internal review of decisions

28. Inserts new sections 39S, 39T, 39U and 39V into the Principal Act which set out procedures for both internal and Administrative Appeals Tribunal review decisions of the IR&D Board relating to the 150 per cent tax concession. It covers the essential matters concerning the concession, namely registration of research agencies, registration and joint registration of eligible companies and certificates as to whether a particular activity is or is not research and development.

Clause 18: Advances in respect of subsidies

29. Amends section 42 of the Principal Act consequent upon the insertion of the National Procurement Development Program in the Principal Act and allows for the possibility that an Australian government body may receive payments under the program.

Clause 19: Annual report

30. Amends section 46 of the Principal Act consequent upon the insertion of the National Procurement Development Program in the Principal Act and includes the program within the scope of the Annual report.

Clause 20: Application of amendments-review of decisions

31. Provides that the amending provisions relating to review of decisions apply in relation to decisions made on or after the date of commencement of this clause.

PART 3 - AMENDMENT OF THE NATIONAL MEASUREMENT ACT 1960Clause 21: Principal Act

32. Provides that in this Part "Principal Act" means the National Measurement Act 1960.

Clause 22: Interpretation

33. Amends the definition of "Australian Legal Unit of Measurement" in section 3 of the Principal Act consequent upon the amendment of section 7 of the Act.

Clause 23: Units of measurement

34. Repeals section 7 of the Principal Act and inserts new sections 7, 7A and 7B which allow The National Standards Commission to issue written guidelines governing the way in which Australian legal units of measurement may be combined to produce an Australian legal unit of measurement. The guidelines are a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

PART 4 - AMENDMENT OF THE SCIENCE AND INDUSTRY
RESEARCH ACT 1949

Clause 24: Principal Act

35. Provides that in this Part "Principal Act" means the Science and Industry Research Act 1949.

Clause 25: Organisation may accept gifts etc. and act as trustee

36. Omits subsection 9A(1) and inserts a new subsection (1) which will enable the Commonwealth Science and Industry Research Organisation (CSIRO) to accept gifts of up to \$1 million without having to obtain Ministerial approval. This threshold may be varied by regulation.

PART 5 - SCHEDULE - AMENDMENT OF OTHER ACTS

37. Corrects minor drafting errors in the Export Market Development Grants Act 1974, Industry, Technology and Commerce Legislation Amendment Act 1989 and Patents Act 1990.

